

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH CONLEY,

Petitioner,

v.

STANISLAUS COUNTY PUBLIC  
DEFENDER'S OFFICE, et al.,

Respondents.

No. 1:22-cv-00680-SKO (HC)

**ORDER TO SHOW CAUSE WHY  
PETITION SHOULD NOT BE DISMISSED  
FOR FAILURE TO EXHAUST STATE  
REMEDIES**

**ORDER GRANTING PETITIONER  
LEAVE TO AMEND PETITION TO NAME  
A PROPER RESPONDENT**

**[TWENTY-ONE DAY DEADLINE]**

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed the instant habeas petition on June 6, 2022, challenging the sentence he received on his 2021 conviction in Stanislaus County Superior Court. The petition appears to be unexhausted and Petitioner will be ordered to show cause why it should not be dismissed without prejudice. Petitioner has also failed to name a proper respondent, and will be granted leave to amend the petition to name a proper respondent.

**DISCUSSION**

**A. Preliminary Review of Petition**

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not

entitled to relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir. 2001).

#### B. Exhaustion

A petitioner who is in state custody and wishes to collaterally challenge his conviction by a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full and fair opportunity to hear a claim if the petitioner has presented the highest state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

Additionally, the petitioner must have specifically told the state court that he was raising a federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme Court reiterated the rule as follows:

In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state remedies requires that petitioners “fairly presen[t]” federal claims to the state courts in order to give the State the “opportunity to pass upon and correct alleged violations of the prisoners' federal rights” (some internal quotation marks omitted). If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution. If a habeas petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but in state court.

Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his

1 federal claims in state court *unless he specifically indicated to that court that those*  
 2 *claims were based on federal law.* See Shumway v. Payne, 223 F.3d 982, 987-88  
 3 (9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held  
 4 that the *petitioner must make the federal basis of the claim explicit either by citing*  
 5 *federal law or the decisions of federal courts, even if the federal basis is "self-*  
 6 *evident,"* Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.  
Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be decided under  
 state law on the same considerations that would control resolution of the claim on  
 federal grounds. Hiiivala v. Wood, 195 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson  
v. Zenon, 88 F.3d 828, 830-31 (9th Cir. 1996); . . . .

7 In Johnson, we explained that the petitioner must alert the state court to the fact that  
 8 the relevant claim is a federal one without regard to how similar the state and federal  
 standards for reviewing the claim may be or how obvious the violation of federal  
 law is.

9 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added), *as amended by Lyons*  
 10 *v. Crawford*, 247 F.3d 904, 904-5 (9th Cir. 2001).

11 Petitioner does not indicate he has sought relief in the state courts before filing the instant  
 12 action. As discussed above, Petitioner must exhaust his state remedies, including seeking relief in  
 13 the California Supreme Court, before seeking federal habeas relief. If Petitioner has not  
 14 presented his claims for federal relief to the California Supreme Court, the Court must dismiss the  
 15 petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v. Rice, 276 F.3d  
 16 478, 481 (9th Cir. 2001). The Court cannot consider a petition that is unexhausted. Rose v.  
 17 Lundy, 455 U.S. 509, 521-22 (1982).

#### 18 C. Proper Respondent

19 Petitioner has named the Stanislaus County Public Defender's Office and his former  
 20 defense attorney as Respondents. A petitioner seeking habeas corpus relief under 28 U.S.C. §  
 21 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2  
 22 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir.  
 23 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Generally, the  
 24 person having custody of an incarcerated petitioner is the warden of the prison in which the  
 25 petitioner is incarcerated because the warden has "day-to-day control over" the petitioner.  
 26 Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); *see also Stanley*, 21 F.3d at 360.  
 27 However, the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d  
 28 at 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper

respondent is his probation or parole officer and the official in charge of the parole or probation agency or state correctional agency. Id.

Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976). The Court will give Petitioner the opportunity to cure this defect by amending the petition to name a proper respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d 1026, 1029 (5th Cir. 1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir. 1975) (*en banc*) (allowing petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394 F.2d 125 (9th Cir. 1968) (same).

In the interests of judicial economy, Petitioner need not file an amended petition. Instead, Petitioner may file a motion entitled "Motion to Amend the Petition to Name a Proper Respondent" wherein Petitioner may name the proper respondent in this action.

#### ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Petitioner SHOW CAUSE within twenty-one (21) days why the petition should not be dismissed for failure to exhaust state remedies. Petitioner is further GRANTED LEAVE to AMEND the petition within twenty-one (21) days to name a proper respondent.

IT IS SO ORDERED.

Dated: June 7, 2022

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE